

# EXHIBIT O

Declaration of Peter C. Salerno  
In Opposition to Plaintiffs' Motion to Compel  
Against Yassin Abdullah Kadi

03 MDL 1570

January 2018



Peter Salerno <peter.salerno.law@gmail.com>

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## Kadi production questions

1 message

**Andrew J. Maloney** <AMaloney@kreindler.com>

Wed, Sep 6, 2017 at 3:57 PM

To: Peter Salerno <peter.salerno.law@gmail.com>

Cc: Jim Kreindler <JKreindler@kreindler.com>, "Sean P. Carter - Cozen O'Connor (scarter1@cozen.com)" <scarter1@cozen.com>, zRobert Haeefele <rhaefe@motleyrice.com>

Dear Peter,

I am responding to your September 1, 2017 letter concerning the Kadi production and plaintiffs' status report to the Court made August 31.

With regard to the Kadi production, we saw, and you confirmed in your July 26, 2017 letter, that your production "did not identify every one of [our] requests to which a particular document was responsive." The rules contemplate doing so, and we noticed that you did this in some of the responses but not in others. You lodged a similar complaint against the PEC on this. Perhaps we can find a way to resolve this.

On contention interrogatories, attached are two partial transcripts of conferences before Judge Maas where he tabled the demand for contention interrogatories for the time being until all discovery, including depositions, was complete, at which time the parties could re-visit the issue with the Court. It is our position that we have not yet completed discovery and that the request is therefore premature.

Finally, on the privilege log, all the documents identified were created before September 11, 2001 and were therefore not created in contemplation of the 9/11 terror litigation. The rules protect disclosure of mental impressions, conclusions, opinions, or legal theories of a party's attorney or other representative concerning the litigation. Even were you to claim that the privilege protects documents created for other unrelated litigation (which we believe would not be protected in the 9/11 terror litigation) we note that a large number of documents do not appear to be created in anticipation of *any* litigation. Many of the documents were not created by or for an attorney and appear to be created in the regular course and scope of business. Those documents are not afforded the work product privilege.

We anticipate at least as to the privilege log, that a motion will be required unless you would like to re-consider some of them if we identify each of the numerous documents. This will take some time and would not be ready before Thursday's conference. With regard to the other items, is it your position that Mr. Kadi does not have in his possession, custody or control, any more documents outside those produced and those identified in the privilege log, and that he cannot readily obtain them?

**Andrew J. Maloney**

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